

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Viral DRM LLC,

Plaintiff,

v.

Unknown Counter Notificants,

Defendants.

CIVIL ACTION NO.  
1:23-cv-01056-AT

**ORDER**

Before the Court is Viral DRM LLC's Motion to Voluntarily Dismiss its suit without prejudice under Federal Rule of Civil Procedure 41(a)(2).<sup>1</sup> [Doc. 23].

Federal Rule of Civil Procedure 41(a)(2) provides that "an action may be dismissed at the plaintiff's request by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Unless the order states otherwise, a dismissal under the rule is without prejudice. *Id.* The district court enjoys broad discretion in determining whether to allow a voluntary dismissal under Rule 41(a)(2). *Pontenberg v. Boston Scientific Corp.*, 252 F.3d 1253, 1255 (11th Cir. 2001). A

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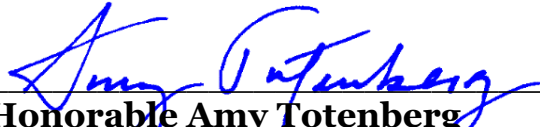
<sup>1</sup> A plaintiff may move for dismissal under Rule 41(a)(2) before an answer or motion for summary judgment has been served. *Beckmann v. Bank of Am., N.A.*, No. 1:14-cv-02675-ODE-JFK, 2015 WL 11578509, at \*3 (N.D. Ga. Jan. 27, 2015), *report and recommendation adopted sub nom. Beckmann v. Bank of Am.*, No. 1:14-CV-2675-ODE-JFK, 2015 WL 11605516 (N.D. Ga. Mar. 4, 2015) (citing *Cunningham v. Whitener*, 182 Fed. App'x 966, 970 (11th 2006)).

voluntary dismissal “should be granted unless the defendant will suffer clear legal prejudice, other than the mere prospect of a subsequent lawsuit.” *Id.* at 1255–56.

Here, it is not apparent that Defendants will suffer clear legal prejudice by the dismissal of this suit. Viral DRM initiated this action in March 2023 and sought an *ex parte* Temporary Restraining Order and other pre-service relief. *See* (Docs. 1, 7, 9, 10). The Court denied Viral DRM’s requests because it concluded that it did not have personal jurisdiction over Defendants. (Doc. 22). Viral DRM subsequently refiled its suit in the Northern District of California in an effort to cure this jurisdictional defect. *See* [Doc. 23 at 2].

Upon “weigh[ing] the relevant equities,” the Court concludes that dismissing this suit without prejudice to allow Viral DRM to pursue its claims in an appropriate venue will further “justice between the parties.” *See Arias v. Cameron*, 776 F.3d 1262, 1269 (11th Cir. 2015). Accordingly, Viral DRM’s Motion to Voluntarily Dismiss its suit under Rule 41(a)(2), [Doc. 23], is **GRANTED** without prejudice.

**IT IS SO ORDERED** this 8th day of September, 2023.

  
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**Honorable Amy Totenberg**  
**United States District Judge**